

IN THE MATTER OF	:	BEFORE THE
<b>LOIS PETERS T/A</b>	:	<b>HOWARD COUNTY</b>
<b>INTERNATIONAL HEALTH</b>	:	<b>BOARD OF APPEALS</b>
<b>CARE CONSULTANTS</b>	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-040C

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**DECISION AND ORDER**

On November 24, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Lois Peters, T/A International Health Care Consultants, for retroactive approval of a Residential Care Facility for a maximum of 12 residents in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N.37 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Lois Peters testified in favor of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 2.0-acre, generally rectangular subject property is located in the 5<sup>th</sup> Election District on the west side of Cedar Lane about 1,200 feet north of Grace Drive. It has a street address of

6636 Cedar Lane and is referenced on Tax Map 35, Grid 22, as Parcel 154 (the "Property").

2. The Property is improved with a one-story, single family dwelling situated about 140 feet from the front property line. A rear patio extends from the southwest corner of the house. Beyond the patio is a fence atop a retaining wall. A paved semicircular driveway provides access. About 30 from the dwelling's northeast corner is a well. To the dwelling's north and rear is a septic tank and septic field. The Property is the site of a group home senior assisted living facility. According to the petition, the dwelling is a state-licensed 12-bed assisted living facility.

3. Six parking spaces are located to the dwelling's southerly side. According to the Conditional Use Plan submitted with the petition, these spaces lie within the 50-foot setback required by Section 131.N.37.d. The Technical Staff Report ("TSR") recommends the request be denied based in part on the location of these parking spaces within the 50-foot setback. In the alternative, the TSR recommends approval if the Petitioner relocates the parking spaces to meet any lesser setback I may approve or submits detailed documentation indicating that they are in compliance the setback requirement.

4. In response to questioning about the location of these parking spaces, the Petitioner testified that she had removed three of the six south parking spaces and created three new parking spaces in front of the dwelling. During my site visit, I observed three vehicles in the south parking spaces. These vehicles were parked several feet beyond the garage and driveway.

5. The Petitioner did introduce an amended plan in response to the TSR's parking space comments when I provided her a copy of the Conditional Use Plan at the hearing. She denoted the location of the three new parking spaces on the amended plan, but did not denote the distance

of either the existing parking spaces or the three new spaces from the side property lot line, or otherwise amend the plan. (Petitioner's Exhibit 1).

6. Topographically, the Property is part of the hillside on the west side of Cedar Lane. Its front section slopes upward with the dwelling sited on the high ground. The Property then slopes downward toward a stream running through the rear, westerly section.

7. The Petitioner is seeking retroactive approval for a conditional use for a Residential Care Facility with a maximum of 12 residents. She stated there are currently 12 beds at the facility and that she needed a lesser setback because of the lot's narrowness.

8. Vicinal Properties. Parcel 87 abuts the Property's south side. The Howard County Department of Public Works owns this wooded, 18.39-acre, R-ED (Residential: Environmental Development) zoned parcel, which is the site of the proposed Robinson Nature Center.<sup>1</sup> To the west are the R-20 zoned Parcels 295 and 173, the last parcel wrapping around the Property. Parcel 173 is improved with a single-family detached dwelling and outbuilding. The stream on the Petitioner's property also runs through these parcels.

9. Roads. Cedar Lane here has two travel lanes in each direction and a variable paving width within a variable width right-of-way. The posted speed limit is 30 MPH.

10. Water and Sewer Service. According to the Howard County Geographic Information System Map, the Property lies within the Metropolitan District and the 6-10 year Planned Service Area. The Petitioner testified that the developer did not connect the dwelling to public water and sewer facilities. Consequently, the 12-bed facility is served by a private well and

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<sup>1</sup> The Department of Planning and Zoning approved the center's Site Development Plan, SDP 09-002, as technically complete.

septic system. For this reason, the Bureau of Environmental Health's recommends the requested use be denied because Health Department records indicate the septic system serving the Property installed in 1974 was for a two-bedroom dwelling, which is inadequate for the proposed use. Based on these comments, the TSR further recommends that requested use be denied, or alternatively, if approved, that the use not commence until an adequate sewage disposal system be installed.

In response to my questions to the Petitioner about the inadequacy of the sewage disposal system, she testified that someone was looking at the water and service problem but provided no evidence as to when the structure would be connected to public water and sewer facilities or that the property was being tested for a larger septic system.

11. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map depicts Cedar Road as a Minor Collector.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B)**

##### **1. Harmony with the Plan**

Section 131.B requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-ED zone. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving

access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate, given the adequacy of proposed buffers and setbacks.

In this case, the proposed use of the Property as a residential care facility for up to 12 occupants is generally compatible with surrounding residential properties along Cedar Lane. The use of a dwelling on a two-acre site as a residential care facility with a maximum of 12 residents would not create adverse impact on adjacent properties. I conclude that the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are appropriate, in accordance with Section 131.B.1.

2. Adverse Impacts.

a). Physical Conditions. The proposed use will be operated predominately indoors, and will not therefore not generate dust, fumes, odors, or noise. The Petitioner proposed no outdoor lighting. I conclude that any adverse impacts such as noise, dust, fumes, orders, lighting, vibrations, hazards, or other physical conditions will not be greater at the original site than generally elsewhere, I here conclude the nature of adverse impacts will not change, in accordance with Section 131.B. 2.a.

b). Structures and Landscaping. No additions to the existing structure are proposed. The existing structure is separated by distance from other structures to the west. The heavily wooded condition of Parcel 87 provides an adequate buffer from the proposed Conditional Use. I conclude the structure, walls and fences, and the nature and extent of the landscaping on the site were such that the use would not hinder or discourage the development and use of adjacent land

and structures more at the subject site than generally elsewhere, in accordance with Section 131.B. 2.b.

c). Parking and Loading. Section 133.D.7 of the Zoning Regulations requires one parking space per two beds. The proposed use must therefore provide six parking spaces. The Petitioner amended the Conditional Use Plan to show three new spaces. It appears the proposed use will provide an adequate amount of parking, in accordance with Section 131.B. 2.c.

d). The ingress and egress drives will continue to provide safe access with adequate sight distance, based on actual conditions, in accordance with Section 131.B. 2.d.

## **II. Specific Criteria for Nursing Homes and Residential Care Facilities (Section 131.N.37)**

### **a. The facility shall have 16 or fewer beds.**

The Proposed Use will have a maximum of 12 beds, in accordance with Section 131.N.37.a.

### **b. The lot for which the home is proposed is at least 40,000 square feet in size.**

Because the Property is two acres in area, it complies with Section 131.N.37.b.

### **c. The design of new structures or additions to existing structures will be compatible in scale and character with residential development in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition showing.**

The facility is a conversion of an existing residence and the Petitioner is not proposing any additions. The proposed facility complies with Section 131.N.37.c.

### **d. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:**

- (1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or**
- (2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.**

Because the adjoining land is committed to a long-term institutional or open space use, a nature center, I may reduce the parking area setback to 20 feet, which I decline to do. The Petitioner has not demonstrated that the parking spaces as reconfigured will place them at least 20 feet from the side property line. Neither the Conditional Use Place nor the amended Plan depict the distance of the southern parking spaces from the side property line and during my site visit, it appeared that several vehicles were parked in the area which the Petitioner stated had been relocated.

Moreover, the Zoning Regulations preclude the Petitioner's request for a setback less than 20 feet based on the narrowness of the Property. Section 131.D.1 expressly prohibits me from granting a variance to the specific requirements of a conditional use, which in this case authorizes me to approve a 20-foot alternative setback under certain circumstances. The proposed use does not comply with Section 131.N.37.d.

**e. At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.**

The Petitioner's plans do not indicate the percentage of open space. However, the dwelling and paving areas appear to comprise about 6,000-square feet of the site. Because the


remainder of the site is either lawn or open space, the proposed use complies with Section 131.N.37.e.

**ORDER**

Based upon the foregoing, it is this 15<sup>th</sup> day of December 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Conditional Use petition of Lois Peters, T/A International Health Care Consultants, for a Residential Care Facility with a maximum of 12 residents in an R-20 (Residential: Single) Zoning District is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

Date Mailed: 12/17/08

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.